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IN THE

Supreme Court of the United States

OCTOBER TERM—1965

No. ~~1948~~ 166

RICHARD M. GLASSNER and
SYLVIA B. GLASSNER,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RICHARD M. GLASSNER,
Pro Se,
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COMMISSIONER OF INTERNAL REVENUE,

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Richard M. Glassner, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered on March 28, 1966.

Citation to Opinions Below

The opinions of the Tax Court of the United States and the United States Court of Appeals for the Third Circuit are unreported but are attached hereto as part of the Appendix.

Jurisdiction

The judgment of the United States Court of Appeals was entered March 28, 1966. There was no Petition for Rehearing filed. The jurisdiction for the United States Supreme Court is invoked under 28 U.S.C.A. 1254.

Statement of the Case

The Respondent determined deficiencies in the petitioners' income taxes for the years 1958, $1,502.70, 1959, $1,946.26 and 1960, $1,903.85. The Tax Court sustained the deficiencies. On Appeal the Third Circuit Court of Appeals affirmed the tax Court's decision.

Sylvia B. Glassner is a party only because joint returns were filed for the years in question.

The petitioner, Richard M. Glassner (hereinafter Glassner) is presently 69, married to the co-petitioner, and has been engaged in the practice of law since 1923.

For the dual purpose of profit from the finance business and prospective clients from customers of the finance companies who would come to the law office, and with the advantage of no additional overhead, Glassner formed first, Seth Boyden, Inc., then Morley & Co., and then, Treat & Co., all New Jersey Corporation; all engaged in the finance business; all of which were in adjoining offices in the same suite as the law office of Glassner and operated by substantially the same personnel.

Glassner and his wife were sole stockholders, directors and officers, and he, the sole manager. Neither had any cash and no capital was invested. All funds were obtained by borrowings on demand notes bearing 1% a month, although

an additional Christmas bonus of 1% was paid to make a total return of 13%. The notes were endorsed personally by Glassner and wife; the lenders were nearly all clients of Glassner; their reliance was solely upon Glassner's integrity and his wife's ownership of substantial income-producing, free and clear real estate.

On paper, the finance business was very successful; so successful that Morley and Treat were formed so that Seth Boyden would not be in too high a tax bracket. The success was short-lived; suddenly the losses appeared and pyramided.

To prevent collapse and to make a comeback, Seth Boyden jumped into the then flourishing "wholesale" automobile business, the business of buying new cars from franchised dealers and selling them to used car lots. The first place of business was a typical used car lot on the outskirts of Newark; the second was a larger lot at the other end of the City; and both were operated by hired managers on the locations, not in the law office and not by Glassner who knew nothing about automobiles. The result was failure and the business degenerated into a used car lot.

It was at this stage that money was borrowed from Samuel M. Goodman (Goodman) on the security of retail installment paper and the personal guarantee of petitioners.

During the decline, interest payments were first cut in half and finally discontinued.

There followed in Glassner's law office a meeting of creditors.

Goodman came with a brief case in which he claimed to have assignments of retail installment paper which was

double-financed. Leon Gerhardt (Gerhardt), the largest creditor, did not come at all. At the meeting, Goodman proclaimed to the others, that his position was different; that he had "double-finance" paper, that is, paper on cars on which prior conditional sale contracts had not been paid off; that his debt is based upon fraud and that his remedies are beyond those of the others, who are common creditors. Goodman threatened a fraud suit to be commenced by a *capias ad respondendum*.

Gerhardt, an extremely wealthy man, a creditor in excess of $100,000.00 and who is blind, came alone at a time following the creditors' meeting and demanded terms beyond the ing the creditors' meeting and demanded terms beyond the others.

Although petitioners were completely divested because all the real estate was turned over to the Creditors' Committee, unless a special deal was made with him, he threatened to use his blindness, to go to the Prosecutor, to go to the Ethics Committee of the Bar Association and claim fraud, which consisted of taking advantage of a blind man, and he would take possession of the office itself so that Glassner would not be able to practice law.

They both (Goodman and Gerhardt) further came to the office, made scenes, so that Glassner was obliged to stay out of the office by day and come in by night and over weekends. At the same time, pressure was brought upon the wife by these two, making scenes at the home, which the other creditors did not do; and this pressure was soon reflected upon Glassner, which resulted in alienating his wife and in breaking up his home and his living alone ever since. The threats and the scenes were so disturbing as to make it impossible to concentrate upon his clients' problems.

Glassner concluded he could not continue to practice law and absent himself by day and have scenes in the presence of clients. Glassner was then over 60, bankrupt and with no means of livelihood except his profession; his will was completely overborne. In order to protect his law office, to protect his profession and the opportunity to practice law, he entered upon the arrangement for his submission to physical examinations and signing applications for insurance for the benefit of Goodman and for Gerhardt.

Glassner was not consulted as to the choice of the insurance companies, the amount of insurance, the type of policy nor the term thereof.

From Goodman's testimony at the trial, Glassner learned for the first time that after receiving his share from the distribution made to all creditors from the sale of the smaller of the two parcels of real estate, his (Goodman's) balance was $30,000.00, but the amount of insurance still carried was $50,000.00.

Admittedly, the premiums did not coincide with the weekly payments of $50.00 to Goodman and $100.00 to Gerhardt, either before the debt was reduced by the distribution aforesaid or after it was so reduced. Indeed, there is no evidence of any reduction in the amount of insurance to correspond to the reduction in the amount of the debt.

At his age, with no assets and with debts of over a quarter of a million dollars, neither he nor his theoretical estate could conceivably reap any benefit, and none was contemplated by the parties. In fact, the two insurance agreements contain no covenants by Goodman and Gerhardt and were not even signed by them.

All creditors knew of these preferential payments to Gerhardt and Goodman but suffered them to continue. The Internal Revenue Service, whose claim is preferred by law over the claims of all the others, also know of these payments and have permitted the payments to be made, upon the protestation of Glassner that he had no choice, that he could not continue to practice law unless these payments to Goodman and Gerhardt were made.

The Statute Involved

The Statute in controversy is Section 264 (a) (1) or the Internal Revenue Code 1954:

> (a) General Rule.—No deduction shall be allowed for—
>
> (1) Premiums paid on any life insurance policy covering the life of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy.

Question Presented

Were the payments made by the petitioner non-deductible because of the provisions of §264(a)(1) of the Internal Revenue Code of 1954, (hereinafter I. R. C.)?

Reasons for Granting the Writ

The payments made by the petitioner were deductible, either (1) as ordinary and necessary expense of carrying on petitioner's business, §162 I. R. C.; or (2) in the alternative, the payments are proper deductions under §212 I. R. C. as expenses paid for the production of income.

Petitioner contends the payments to Gerhardt and Goodman are tax deductible as ordinary and necessary expense in the conduct of his law practice. If Goodman and Gerhardt had carried out their threats and continued their harrassment, the maintenance of his law practice would have been impossible. This was Glassner's conclusion; a conclusion concerning which reasonable men could not differ. He had no capital for any business ventures; law was his only skill; and, while lawyers are employable all over the country by commercial firms, it is common knowledge that men who have reached retirement age are not employable.

In support of the argument that these payments are ordinary and necessary expenses, the petitioner relies upon *Cubbedge Snow* v. *Commissioner,* 31 T. C. 585 (1958); *C. Doris H. Pepper* v. *Commissioner,* 36 T. C. 886 (1961).

Moreover, petitioner contends that the payments to Gerhardt and Goodman are expenses necessary to the production of income and, therefore, deductible. Code §212. Glassner could not have earned a livelihood and, therefore earned any income in any year, including the taxable years of 1958, 1959 and 1960 unless he submitted to Gerhardt and Goodman's demands for payment as heretofore mentioned.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

RICHARD M. GLASSNER,
Pro se

[APPENDICES FOLLOW]

APPENDIX A

Opinion of the Tax Court

43 T. C. No. 56
TAX COURT OF THE UNITED STATES

RICHARD M. GLASSNER AND
SYLVIA B. GLASSNER,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET No. 1722-63

February 19, 1965

Held, that payments made by Glassner in 1958, 1959, and 1960, pursuant to his written agreements to secure creditors Gerhardt and Goodman by obtaining certain life insurance policies on his life and paying the premiums thereon, are not deductible because Glassner was "directly or indirectly" benefited by the payments within the meaning of section 264(a)(1), I.R.C. 1954. Glassner's estate would have benefited if he had died, since the proceeds of the

policies would have reduced the debts to the two creditors. Whether the premium payments otherwise qualified as a deductible business, or any other, expense, they were not deductible. Sec. 264(a)(1); sec. 1.264-1, Income Tax Regs.

Richard M. Glassner, pro se.

Alan M. Stark for the respondent.

TRAIN, *Judge*: Respondent determined deficiencies in the petitioners' income taxes for the years and in the amounts as follows:

1958	$1,502.70
1959	1,946.26
1960	1,903.85

The sole issue for decision is whether respondent erred in determining that certain life insurance premiums paid by petitioner Richard M. Glassner were not deductible because of the provisions of section 264(a)(1) of the Internal Revenue Code of 1954.[1]

FINDINGS OF FACT

Some of the facts have been stipulated and the stipulation of facts, together with the exhibits attached thereto, is incorporated herein by this reference.

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[1] All references are to the Internal Revenue Code of 1954 unless otherwise indicated.

Appendix A

Petitioners, Richard M. Glassner (hereinafter sometimes referred to as Glässner) and Sylvia B. Glassner (hereinafter sometimes referred to as Sylvia), husband and wife, filed timely joint Federal income tax returns with the district director of internal revenue, Newark, New Jersey, for the taxable years 1958, 1959, and 1960. Sylvia is a party only because joint returns were filed for the years in question.

Glassner practiced law and was president and managing officer of three New Jersey corporations, Seth Boyden, Inc., Morley & Co., and Treat & Co., which engaged in the business of financing receivables arising from the sale of automobiles. In 1953 and 1955 Seth Boyden, Inc., borrowed a total of $115,000 from Leon Gerhardt (sometimes hereinafter referred to as Gerhardt), which loans were personally guaranteed by petitioners. In 1953 Glassner borrowed $4,500 from Gerhardt, which loan was personally guaranteed by Sylvia. In 1954 Morley & Co. and Treat & Co. borrowed a total of $54,000 from Samuel M. Goodman (sometimes hereinafter referred to as Goodman), which loans were personally guaranteed by petitioners.

In 1957 Seth Boyden, Inc., Morley & Co., and Treat & Co. went out of business without paying their debts to Gerhardt and Goodman. Petitioners were unable to make payment as guarantors of these debts.

On August 16, 1957, Glassner, in order to secure his indebtedness, executed an agreement for the benefit of Goodman in which he agreed to obtain life insurance, pay the premiums thereon, and designate Goodman as beneficiary thereof. A similar agreement was executed for the benefit

of Gerhardt on November 14, 1957. Glassner entered into these agreements principally to protect his law practice.

Glassner obtained Metropolitan Life Insurance Co. policy number 8-309-913, effective as of September 1, 1957, in the amount of $50,000. Goodman was designated as beneficiary and given exclusive control over the policy. Glassner also obtained Franklin Life Insurance Co. policies numbers 1671309, 1671310, and 1671311, effective as of September 26, 1957, in the total amount of $75,000. Gerhardt was designated as beneficiary and given exclusive control over such policies.

Glassner made payments to Goodman totaling $2,776, $2,600 and $2,600 in the years 1958, 1959, and 1960, respectively. Such payments were made pursuant to his agreement to pay the premiums on the life insurance policy of which Goodman was to be the beneficiary. Goodman paid the cost of the life insurance premiums and, to the extent the payments from Glassner did not fully cover their cost, he paid the balance out of his funds.

Pursuant to his agreement, Glassner made payments totaling $3,815, $5,100, and $5,200 in the years 1958, 1959, and 1960, respectively into an account opened by Gerhardt for the express purpose of receiving Glassner's deposits and applying them towards the premiums on the life insurance policies of which Gerhardt was beneficiary. To the extent that the deposits did not fully satisfy the cost of the premiums Gerhardt paid the balance out of his own funds.

OPINION

Petitioners contend that the total amounts of $6,591, $7,800, and 7,800 paid during the years 1958, 1959, and 1960,

respectively, pursuant to the agreements with Goodman and Gerhardt, are allowable as deductions incurred in the carrying on of the practice of law; or alternatively, as deductions incurred for the production or collection of income, or for the management, conservation, or maintenance of property for the production of income; or alternatively, as deductions for interest. Respondent's position is that Glassner's payments come within the meaning of section 264(a)(1) and are not deductible. The issue for our decision is whether Glassner was "directly or indirectly" benefited by the premium payments he made, within the meaning of section 264(a)(1) which states as follows:

> (a) General Rule.—No deduction shall be allowed for—
>
> (1) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, *when the taxpayer is directly or indirectly a beneficiary under such policy.* [Emphasis supplied.]

If this question is decided in the affirmative, the premiums are not deductible whether or not otherwise deductible as a trade or business, or any other, expense. Section 1.264-1, Income Tax Regs., which specifically denies a deduction for life insurance premiums otherwise deductible as trade or business expenses, provides:

> (a) *When premiums are not deductible.* Premiums paid by a taxpayer on a life insurance policy are not deductible from the taxpayer's gross income, even

> though the would otherwise be deductible as trade or business expenses, if the are paid on a life insurance policy covering the life of any officer or employee of the taxpayer, or any person (*including the taxpayer*) who is financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary of the policy * * * [Emphasis supplied.]

In *Jefferson* v. *Helvering*, 121 F. 2d 16 (C.A.D.C., 1941), affirming 40 B.T.A. 274 (1939), it was held that the taxpayer was "directly or indirectly" benefited by premiums paid by him on life insurance policies he obtained and irrevocably assigned to his creditors as security. The court found that if the debts were paid while the taxpayer was alive, the policies would revert to him, and that if he died before the debts were liquidated, his estate would benefit to the extent its liabilities were reduced. Although this case arose under section 24(a)(4) of the Revenue Act of 1934, that section is almost identical with section 264(a)(1). See also *Rieck* v. *Heiner*, 25 F. 2d 453 (C.A. 3, 1928), where the court held that if the policy had matured while held as collateral, the insurance proceeds would indirectly augment taxpayer's estate by decreasing his liabilities; *Klein* v. *Commissioner*, 84 F. 2d 310, 311 (C.A. 7, 1936), affirming 31 B.T.A. 910 (1934); *Benjamin Barron*, 14 B.T.A. 1022 (1929); and *J. H. Parker*, 13 B.T.A. 115 (1928).

Although Glassner did not pay the premiums directly to the insurance companies and there was contribution towards payment by the creditors, we consider the above decisions to be controlling in this matter. Not only did Glassner agree

in writing to obtain insurance policies and pay the premiums thereon, but he testified that he was aware the sums he remitted were to be used solely for the purpose of paying the premiums. We cannot agree with Glassner that his insolvency precludes any chance of his ever being "directly or indirectly" benefited by the policies, especially since by his own admission he could not have continued the unobstructed practice of law without satisfying Gerhardt's and Goodman's demands for security. There is also no question that his estate's indebtedness will be reduced by the proceeds of the policy and that if he manages to pay off his indebtedness, the policy will revert to him. Any of the above considerations constitute a direct or indirect benefit within the meaning of section 264(a)(1).

Respondent has established that Glassner is benefited "directly or indirectly" by the policies. Since it has been established that section 264(a)(1) is applicable to this situation, we do not have to determine whether the premium payments were ordinary and necessary business, or other, expenses.

Decision will be entered for the respondent.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 15441

RICHARD M. GLASSNER AND
SYLVIA B. GLASSNER,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ON PETITION FOR REVIEW OF THE DECISION OF THE TAX COURT OF THE UNITED STATES

Argued February 3, 1966

Before STALEY, SMITH and FREEDMAN, *Circuit Judges*

Opinion of the Court

(Filed March 28, 1966)

PER CURIAM

The Tax Court sustained deficiencies in the petitioners' income taxes for the years 1958, 1959 and 1960. It held

that payments made by the husband taxpayer for premiums on life insurance policies which he obtained to secure his debts were not deductible because he was a beneficiary of the policies. Internal Revenue Code of 1954, § 264(a)(1).[1]

It would serve no useful purpose to review the factual details of the argument here presented and the unfortunate position in which the husband taxpayer found himself.

On a careful consideration of the arguments made and of the briefs and record, it is clear that the decision of the Tax Court was correct.

The decision of the Tax Court therefore will be affirmed.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

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[1] "No deduction shall be allowed for—

(1) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy."

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 15,441

RICHARD M. GLASSNER and
SYLVIA B. GLASSNER,

Petitioners

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

(T.C. Docket No. 1722-63)

ON PETITION TO REVIEW A DECISION OF THE TAX COURT
OF THE UNITED STATES

Judgment

Present: STALEY, SMITH and FREEDMAN, Circuit Judges.

This cause came on to be heard on the record from the Tax Court of the United States, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decision of the said Tax Court in this cause be, and the same is hereby affirmed.

ATTEST:

M. ELIZABETH FERGUSON
Deputy Clerk

March 28, 1966

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 166

RICHARD M. GLASSNER AND SYLVIA B. GLASSNER, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

STATEMENT

Petitioner,[1] a practicing lawyer, was also president and managing officer of three corporations engaged in the finance business. In 1953 and 1955 one of these companies—Seth Boyden, Inc.—borrowed a total of $115,000 from Leon Gerhardt; these loans were guaranteed by petitioner and his wife. In 1953 petitioner personally borrowed $4,500 from Gerhardt; this loan was guaranteed by petitioner's wife. In 1954 the remaining two companies—Morley & Company and

[1] Sylvia B. Glassner, petitioner's wife, is a party solely because she filed joint returns with her husband.

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Treat & Company—borrowed a total of $54,000 from Samuel M. Goodman; like the loan to Seth Boyden, Inc., these loans were guaranteed by petitioner and his wife. (Pet. 3a).

In 1957 Seth Boyden, Inc., Morley & Company and Treat & Company went out of business without paying their debts to Gerhardt and Goodman. Petitioner and his wife were unable to make payment as guarantors of these debts. (Pet. 3a.)

On August 16, 1957, petitioner, in order to secure his outstanding indebtedness to Goodman, executed an agreement for the benefit of Goodman in which petitioner agreed to obtain life insurance, pay the premiums thereon, and designate Goodman as beneficiary thereof. Pursuant to this agreement, petitioner obtained a life insurance policy in the amount of $50,000, effective September 1, 1957. Goodman was designated as beneficiary and given exclusive control over the policy. A similar agreement was executed for the benefit of Gerhardt on November 14, 1957, and petitioner obtained life insurance policies in the total amount of $75,000, effective September 26, 1957, designating Gerhardt beneficiary and giving Gerhardt exclusive control over the policies. Petitioner entered into these life insurance agreements principally to protect his law practice. (Pet. 3a–4a.)

Pursuant to his agreement to pay the premiums on the life insurance policy of which Goodman was the beneficiary, petitioner made payments to Goodman totaling $2,776, $2,600 and $2,600 in the years 1958, 1959, and 1960, respectively. Goodman paid the cost of

the life insurance premiums and, to the extent the payments from petitioner did not fully cover their cost, he paid the balance out of his own funds. During the same years, petitioner made payments totalling $3,815, $5,100 and $5,200 into an account opened by Gerhardt for the purpose of receiving petitioner's deposits and applying them towards the premiums on the life insurance policies of which Gerhardt was beneficiary. To the extent that the deposits did not fully satisfy the cost of the premiums, Gerhardt, like Goodman, paid the balance out of his own funds. (Pet. 4a).

On his federal income tax returns for 1958, 1959, and 1960, petitioner claimed as deductions the amounts paid pursuant to the agreements with Goodman and Gerhardt. The Tax Court disallowed the deductions, finding them specifically prohibited by Section 264 (a)(1) of the Internal Revenue Code of 1954 (Pet. 1a–7a). The court of appeals affirmed (Pet. 8a–9a).

ARGUMENT

Section 264(a)(1) of the Internal Revenue Code of 1954 provides: "No deduction shall be allowed for—(1) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy." Contrary to petitioner's contention (Pet. 6–7), this section, where applicable, clearly precludes a deduction of life insurance premiums despite the fact that the amounts paid might otherwise be deductible under

separate sections of the Code. Section 261 of the Code—which, with Section 264, is part of Part IX of the Code, entitled "Items Not Deductible"—provides explicitly that "[i]n computing taxable income no deduction shall in any case be allowed in respect of the items specified in this part." The applicable Regulations (Section 1.264–1, 1954 Code) also specify that, where Section 264 applies, "[p]remiums paid by a taxpayer on a life insurance policy are not deductible from the taxpayer's gross income, even though they would otherwise be deductible as trade or business expenses." See also *Klein* v. *Commissioner*, 84 F. 2d 310 (C.A. 7).

Since the policies in this case were taken out to secure debts owed by petitioner, they clearly constituted a benefit to him and the premium payments thus fell within Section 264 if paid by petitioner. *Jefferson* v. *Helvering*, 121 F. 2d 16 (C.A.D.C.); *Klein* v. *Commissioner, supra; Rieck* v. *Heiner*, 25 F. 2d 453 (C.A. 3), certiorari denied, 277 U.S. 608; *King* v. *Commissioner*, decided September 27, 1963 (P–H T.C. Memo, par. 63,267); *Barron* v. *Commissioner*, 14 B.T.A. 1022; *Parker* v. *Commissioner*, 13 B.T.A. 115. The Tax Court correctly decided that, although petitioner did not pay the premiums directly to the insurance companies, he was to be treated as having made the premium payments because, "[n]ot only did Glassner agree in writing to obtain insurance policies and pay the premiums thereon, but he testified that he was aware the sums he remitted were to be

used solely for the purpose of paying the premiums" (Pet. 6a–7a).[2]

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

MITCHELL ROGOVIN,
Assistant Attorney General.

ROBERT N. ANDERSON,
ROBERT H. SOLOMON,
Attorneys.

JUNE 1966.

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[2] *Snow* v. *Commissioner*, 31 T.C. 585, and *Pepper* v. *Commissioner* 36 T.C. 886, cited by petitioner, do not involve the deductibility of insurance premiums and are therefore not relevant here.

U. S. GOVERNMENT PRINTING OFFICE: 1966